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June 26, 1995

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20054

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

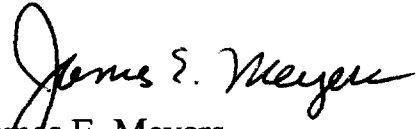
Re: WT Docket No. 95-47, RM-8476, FCC 95-158, Comments of
Erwin Aguayo, Jr.

Dear Mr. Caton:

Transmitted herewith on behalf of Erwin Aguayo, Jr. are an original and five copies of his comments in connection with the above-captioned Notice of Proposed Rule Making.

Should you have any questions, please contact the undersigned.

Very truly yours,


James E. Meyers,
Counsel for Erwin Aguayo, Jr.

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Amendment of Part 95 of the)	WT Docket No. 95-47
Commission's Rules to allow)	
Interactive Video and Data)	RM-8476
Service licensees to provide)	
mobile service to subscribers)	

COMMENTS OF ERWIN AGUAYO, JR.

Erwin Aguayo, Jr. ("Aguayo"), through undersigned counsel, submits its comments to the above-referenced Notice of Proposed Rule Making, FCC95-158, released May 5, 1995 ("Notice"). Aguayo generally approves the Commission's proposal provided that: (1) the Commission continue to authorize fixed Response Transmitter Units ("RTUs") to operate up to 20 Watts Effective Radiated Power ("ERP"); (2) that itinerant RTUs be allowed to operate at power levels up to 20 Watts; (3) that mobile RTUs be allowed to operate at power levels above 100 milliwatts (up to 20W) upon a showing by the IVDS licensee that no harmful interference will result to Channel 13 operations; (4) that the Commission not make the existing duty cycle a regulatory threshold for IVDS to remain primarily an interactive service as opposed to a personal communications-type service; and

(5) that the Commission clarify that its action in this proceeding is not a basis for determining or analyzing what constitutes permissible ancillary fixed service by a Commercial Mobile Radio Service ("CMRS") provider.

I. INTRODUCTION

Aguayo is the licensee of two IVDS frequencies, which he acquired through competitive bidding at the July 28 and 29, 1994 auction.¹ Aguayo believes that numerous other auction licensees welcome the Commission's approach in the Notice to freeing-up the use of IVDS spectrum in order for the service to evolve and ultimately flourish for the benefit of the public. In favoring permissible IVDS service to accommodate EON's mobile applications, the Commission should not neglect other system and technology options.

II. THE COMMISSION SHOULD CONTINUE TO AUTHORIZE RTU'S UP TO 20 WATTS ERP

There is no basis for eliminating the 20Watt ERP authorization for fixed RTUs. While lower power 100 milliwatt mobile RTUs may be appropriate in a given Channel 13 Grade B scenario, there are a number of potential network topologies and fixed service applications that foreseeably require and for which

¹Aguayo is the licensee of Frequency A, Market 58 (Allentown-Bethlehem-Easton, PA-NJ) and Market 76 (New Bedford-Fall River, MA).

higher power fixed RTU applications are desirable. The mere possibility, alluded to by the Commission in the Notice (§8), that companies other than EON could have all RTUs --fixed and mobile-- operate at 100 milliwatts is not a basis to foreclose systems that could be designed to provide fixed service through RTU applications at a higher ERP while also offering mobile applications at the same or some lower, 100 milliwatt ERP

The Commission and the record developed in establishing the current 20 Watt authorization carefully considered and determined the potential for Channel 13 and other interference. Now is the time to expand IVDS licensee service options, not foreclose them

Accordingly, the Commission should not require that mobile RTUs operate at 100 milliwatts where the licensee can demonstrate that some higher level (up to 20 Watts) will not cause interference with Channel 13 operations in the licensee's service area. By the same token, itinerant, as opposed to mobile, use of RTUs should not be subject to any limitation (below 20 Watts) if collocated with a fixed RTU or, if not, where it can be demonstrated that such RTU will not cause interference to Channel 13. (Itinerant RTUs are akin to portability; one ought to be able to bring his or her RTU to his or her friend's home that has a fixed RTU; itinerant RTUs can be programmed not to transmit at interfering levels in Channel

13 zones, such as, while interacting in a vehicle with a radio program.)

III. IT IS NOT REASONABLE TO RELY ON THE PRESENT DUTY CYCLE TO ASSURE THAT IVDS REMAINS INTERACTIVE

The present 5-second per hour duty cycle, in a given license area, a given application or a given Channel 13 scenario could be relaxed considerably while still effectively precluding IVDS from abandoning interactive communications. See, for example, the Petition for Rule Waiver, filed by Kingdom Hughes on June 5, 1995. Public Notice, Mimeo No. 54505, released June 23, 1995. The ancillary nature of mobile applications for the IVDS service can be assured by 10, 20 and even 30 second or higher duty cycles for mobile applications. For fixed and itinerant applications, there should be no regulatory reliance on a duty cycle limit since both fixed and itinerant applications are clearly interactive.

IV. THE COMMISSION SHOULD CLARIFY THAT WHATEVER ACTION IT TAKES IN THIS PROCEEDING IS NOT A BASIS FOR ANALYSIS OF WHAT MIGHT BE PERMISSIBLE CMRS ANCILLARY FIXED SERVICE

The Commission should clearly pronounce that its action here, in the IVDS service, does not form a precedent or basis for evaluating fixed applications that are ancillary to mobile service under personal communications or any other

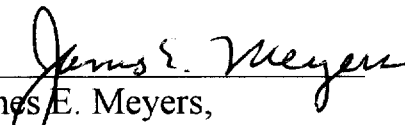
CMRS. If IVDS is to survive and provide the public with the needed benefits that can only be provided by point to multipoint, multipoint to point service, then the Commission should not open IVDS and its promises to CMRS providers seeking additional market niches.

V. CONCLUSION

Based on the above, the Commission should preserve the ability of IVDS licensees to continue to operate their RTUs at the currently authorized 20 Watts ERP and to maintain the option for flexibility in the duty cycle limits so long as the potential for Channel 13 interference is safeguarded.

Respectfully submitted,

ERWIN AGUAYO, JR.

By 
James E. Meyers,
His Counsel

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